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WASHINGTON, D. C.

STATEHOOD CONSTITUTIONAL CONVENTION

Tuesday,
April 27, 1982
9th Floor meeting room
Washington University
10th and E Streets,
Washington, D.C.

The above-described meeting was called to order, pursuant to notice, by CHARLES CASSELL, PRESIDENT, acting as Chairman.

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JUDICIAL BRANCH COMMITTEE

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P R O C E E D I N G S

CHAIRMAN CASSELL: I call the Convention to order.

We will have our traditional brief moment of quiet prayer and meditation.

[Brief moment of silence.]

CHAIRMAN CASSELL: Mr. Secretary, would you read the roll?

SECRETARY COOPER: Delegate Baldwin.

Delegate Barnes.

Delegate Blount.

Delegate Bruning.

DELEGATE BRUNING: Here.

SECRETARY COOPER: Delegate Cassell.

CHAIRMAN CASSELL: Present.

SECRETARY COOPER: Delegate Clarke.

Delegate Coates.

DELEGATE COATES: Present.

SECRETARY COOPER: Delegate Cooper. Present.

Delegate Corn.

DELEGATE CORN: Present.

SECRETARY COOPER: Delegate Croft.

DELEGATE CROFT: Present.

SECRETARY COOPER: Delegate Eichhorn.

DELEGATE EICHHORN: Here.

SECRETARY COOPER: Delegate Feely.

DELEGATE FEELY: Present.

SECRETARY COOPER: Delegate Freeman.

Delegate Garner.

DELEGATE GARNER: Here.

SECRETARY COOPER: Delegate Graham.

DELEGATE GRAHAM: Here.

SECRETARY COOPER: Delegate Harris.

DELEGATE HARRIS: Here.

SECRETARY COOPER: Delegate Holmes.

DELEGATE HOLMES: Here.

SECRETARY COOPER: Delegate Jackson.

DELEGATE JACKSON: Present.

SECRETARY COOPER: Delegate Johnson.

Delegate Jones.

DELEGATE JONES: Here.

SECRETARY COOPER: Delegate Jordan.

Delegate Kameny.

DELEGATE KAMENY: Here.

SECRETARY COOPER: Delegate Lockridge.

DELEGATE LOCKRIDGE: Here.

SECRETARY COOPER: Delegate Long.

SECRETARY COOPER: Delegate Love.

DELEGATE LOVE: Here.

SECRETARY COOPER: Delegate Maguire.

DELEGATE MAGUIRE: Here.

SECRETARY COOPER: Delegate Marcus.

Delegate Charles Mason.

DELEGATE CHARLES MASON: Here.

SECRETARY COOPER: Delegate Hilda Mason.

DELEGATE HILDA MASON: Here.

SECRETARY COOPER: Delegate Bryan Moore.

DELEGATE BRYAN MOORE: Present.

SECRETARY COOPER: Delegate Jerry Moore.

Delegate Talmadge Moore.

DELEGATE TALMADGE MOORE: Present.

SECRETARY COOPER: Delegate Nahikian.

DELEGATE NAHIKIAN: Here.

SECRETARY COOPER: Delegate Nixon.

DELEGATE NIXON: Here.

SECRETARY COOPER: Delegate Oulahan.

DELEGATE OULAHAN: Here.

SECRETARY COOPER: Delegate Paramore.

Delegate Robinson.

DELEGATE ROBINSON: Here.

SECRETARY COOPER: Delegate Rothschild.

DELEGATE ROTHSCHILD: Here.

SECRETARY COOPER: Delegate Schrag.

DELEGATE SCHRAG: Here.

SECRETARY COOPER: Delegate Shelton.

DELEGATE SHELTON: Present.

SECRETARY COOPER: Delegate Simmons.

DELEGATE SIMMONS: Present.

SECRETARY COOPER: Delegate Street.

Delegate Terrell.

DELEGATE TERRELL: Here.

SECRETARY COOPER: Delegate Thomas.

DELEGATE THOMAS: Here.

SECRETARY COOPER: Delegate Warren.

DELEGATE WARREN: Present.

SECRETARY COOPER: Delegate Baldwin.

Delegate Barnes.

Delegate Blount.

DELEGATE BLOUNT: Present.

SECRETARY COOPER: Delegate Clarke.

Delegate Freeman.

Delegate Johnson.

DELEGATE JOHNSON: Present.

SECRETARY COOPER: Delegate Jordan.

Delegate Marcus.

Delegate Jerry Lee Moore.

Delegate Paramore.

Delegate Street.

Mr. President, we have 36 Delegates present.

PRESIDENT CASSELL: There being 36 Delegates present, the Convention is now in order.

There will be announcements at the end of the evening. There is at least one that I know of.

Let me remind us all that we are getting a very late start. It is now 6:56. As you know, we are entitled to be in this building normally until 10:00 o'clock. After that, it costs the City Government money. In addition to that, at 11:00 o'clock, the elevators cease.

So let us try to tighten up our procedures. We read the Rules of Procedure regarding drafting a constitution last night and I trust that those rules are fresh in everybody's mind.

We allow the committee to make their presentation by reading the proposal and then explaining the proposal and then taking questions, responding to those questions and then formal debate, then a vote and/or amendments.

I want to commend the committee of last night for the comprehensive nature of their presentation and for the fact that they had anticipated just about every question that might come. I think that we made an excellent record last night, all the members of that committee and I would hope that that set a tone for the rest of us for the balance of the Convention.

I will now ask Delegate Blount, who is Chairperson of the Judicial Branch Committee, to make his presentation.

Do we have the chairs up front? All right, the chairs are there if you want to invite your committee members up front to assist you in making your presentation.

And remember that there will be 10 to 30 minutes of discussion at the completion of the reading.

And Delegates, please, may we have order?

Delegate Blount.

DELEGATE BLOUNT: Will all the members come forward, please? Will all the members of the Judiciary Committee come forward, please?

PRESIDENT CASSELL: Delegate Blount, you have the Floor.

DELEGATE BLOUNT: Mr. Chairman and Fellow Delegates. It is with a deep sense of satisfaction and

accomplishment that I present on behalf of the Judiciary Committee the Article on Judiciary for consideration by the Convention.

I pay special tribute to members of the committee and staff, Delegate Jan Eichhorn, Vice Chair, Delegate Marie Nahikian, Ward 1, Delegate Bryan Moore, Ward 2, Delegate Courts Oulahan, Ward 3, Delegate Janette Harris, Ward 4, Delegate Harry Thomas, Ward 5, Delegate Gwendolyn Paramore, Ward 8, Delegate Dave Clarke, at large, Barbara Baker, our research assistant, Sylvia Ware -- this is Barbara Baker -- Sylvia Ware, our secretary -- Olivia Williams, our new secretary, here.

I would like to point out that all of the Delegates on the Committee did an excellent job. Delegate Eichhorn did a lot of drafting of letters for us. Delegate Courts Oulahan got us started with many different versions of the Articles. Delegate Harry Thomas did a lot of xeroxing for us and was very cooperative. Delegate Janette Harris helped us a great deal with procuring many of our speakers for briefings.

Delegate Gwendolyn Paramore helped us in many, many ways as having refreshments for us as well as being informed

So I just wanted to point out those persons as

going beyond the call of duty.

Rather than read the entire Article -- fellow Delegates -- I would read highlights of the Article and the committee will entertain questions afterwards.

Highlights of the Judiciary Article are:

Unified Judicial System consisting of a Superior Court and a Supreme Court.

Superior Court will have a Chief Judge and not less than 45 nor more than 48 Associate Judges.

Supreme Court will have a Chief Justice and eight Associate Justices sitting all together en banc.

The Judicial Nominating Commission will designate Chief Justice and Chief Judge.

The Governor shall appoint --

PRESIDENT CASSELL: Delegate Blount --

DELEGATE BLOUNT: Yes.

PRESIDENT CASSELL: Excuse me for interrupting. The procedure we agreed on was to have the entire Article read -- the entire Articles read.

We realize that yours is wrong, right? But that is our procedure, is to read the entire thing from beginning to end, all right?

We would all then have heard every line and we

would be better-able, then, to respond to the various amendments that come line-by-line. We also need to have it read into the record, also.

DELEGATE BLOUNT: Okay, complying with that request:

3.1 of the Judiciary Article is entitled Judicial Power: The judicial power of the State shall be vested in a unified judicial system consisting of a Superior Court and a Supreme Court and shall include such inferior courts as may from time-to-time be established by law.

All such courts shall be courts of record.

3.2 Jurisdiction -- Superior Court: The Superior Court shall have jurisdiction of any civil or other case or controversy in preventative at-law or in equity brought in the state , any criminal proceeding under any statute of the State and such other jurisdiction as the legislature may provide by statute.

3.3 Jurisdiction -- Supreme Court: The Supreme Court of the State shall have jurisdiction of appeals from decisions of the Superior Court to the extent provided by statute; to review orders and decisions of the Governor and any agency of the Executive Branch as provided by statute; and of such other matters as may --

[Pause.] [Looking for next page in sequence.]

PRESIDENT CASSELL: Are you waiting for order, Delegate Blount?

DELEGATE BLOUNT: No.

And of Justice and Associate Justices of the Supreme Court of the State.

Correction. Such other matters as may be provided by statute.

Section 3.4 Composition, Superior Court: The Superior Court of the State shall consist of the Chief Judge and not less than 45 nor more than 48 Associate Judges.

Section 3.5 Composition, Supreme Court: The Supreme Court shall consist of a Chief Judge and not more than eight Associate Judges who shall sit en banc and not as a division or panel.

The Chief Judge of the Supreme Court shall be designated by the Judicial Nominating Committee from among the judges of court and regular active service and shall serve as Chief Judge for a term of four years or until his successor is designated.

The Judge shall be eligible for a redesignation as Chief Judge.

Section 3.6 Former District of Columbia Court of

Appeals Judges. The Chief Judge and Associate Judges of the former Court of Appeals of the District of Columbia shall become the Chief Justice and Associate Justice of the Supreme Court of the State.

Section 3.7 Former District of Columbia Superior Court Judges. The Chief Judge and Associate Judges of the former Superior Court of the District of Columbia shall become the Chief Judge and Associate Judges of the Superior Court of the State.

Section 3.8 Retired Judges of the District of Columbia Court of Appeals. Retired Senior Judges of the Court of Appeals of the District of Columbia may be designated as retired Senior Justices of the Supreme Court of the State.

Section 3.9 Expiration of Terms and Other Vacancies: Upon the expiration of the terms of each Chief Justice or Chief Judge or Associate Justice or Associate Judge of these courts, vacancies shall be filled for each such position in accordance with the procedures set forth in Section 3.10 of this Article 3.

Section 3.10 Nomination and Appointment: The Governor shall nominate from a list of three persons recommended for each vacancy by the Judicial Nomination Commission and with the advice and consent of the legislature, shall

appoint all judges of the Superior and Supreme Courts.

Section 3.11 Requirement for Judicial Office. No person may be nominated or appointed a judge of the Superior or Supreme Court unless he or she:

A) is a citizen of the United States,

B) is an active member of the United States Bar and has been engaged in the active practice of law in the state for five years preceding this nomination or for five years or has been on a faculty of a law school in the state, or has been employed as a lawyer by the United States or the state government,

C) is a bona fide resident of the State and has maintained an actual place of abode in the state for at least one year immediately prior to nomination and shall retain such residency as long as he or she serves as such judge,

D) is recommended to the Governor for such nomination and appointment by the State Judicial Nomination Commission,

E) has not served within a period of two years prior to his or her nomination as a member of the Tenure Commission or of the State Judicial Nomination Commission.

Section 3.12 Tenure. Judges of the Superior Court shall be appointed for a term of 10 years and the justices of the Supreme Court for a period of 12 years, subject

to mandatory retirement at age 70 or removal, suspension or involuntary retirement.

The Justices shall serve until reappointment or a successor is appointed.

Section 3.13 Judicial Nomination Commission. There shall be established for the State a Judicial Nomination Commission which shall sit for a term of six years. The Commission shall consist of nine members of which five shall be elected on a non-partisan basis by the voters and four shall be appointed.

Such members shall serve for terms of six staggered years.

The Governor and Board of Governors of the Unified State Bar shall designate at the time of such appointments the order that members shall serve their terms.

Each member shall be a citizen of the United States and a bona fide resident of the State at least one year immediately prior to the appointment.

Section 3.14 Commission Membership. Members of the Commission shall be selected as follows:

A) Two members shall be appointed by the Governor of which one shall have engaged in the practice of law in the State for at least five successive years preceding appointment.

B) One member shall be appointed by the Board of Governors of the Unified State Bar and shall have been engaged in the practice of law for at least five years preceding appointment.

C) One shall be appointed by the legislature and shall be a lawyer or a retired justice or a judge of the state.

D) Three shall be elected by the voters and shall not be lawyers.

E) Two shall be elected by the voters and shall have been engaged in the practice of law in the state for at least five successive years preceding elections.

Judges on the Commission shall serve without compensation. Other members shall receive a daily equivalent at the rate of Grade 18 of the General Schedule.

The Commission shall choose annually from among its members a Chairperson and other officers as deemed necessary. Members of the Commission shall serve until their successors are selected.

Commission members must retain residency in the state.

In the event an elective seat becomes vacant, the Governor shall temporarily fill the seat by appointment until the next regularly-scheduled election is held.

Section 3.15 Expiration of Term. Not less than three months prior to the expiration of his term of office, any judge of the District of Columbia Court may file with the Tenure Commission a Declaration of Candidacy for Reappointment.

If a Declaration is not so filed by any judge, a vacancy shall result from the expiration of his term of office, and shall be filed by appointment as provided in Section 3.9 or 3.10.

If a Declaration is so-filed, the Tenure Commission shall, not less than 30 days prior to expiration of the declaring candidate's term of office, prepare and submit to the Governor a written evaluation of the declaring candidate's performance during his present term of office and his fitness for reappointment to another term.

If the Tenure Commission determines the declaring candidate to be exceptionally well-qualified or well-qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension or removal.

If the Tenure Commission determines that the declaring candidate, to be qualified for reappointment to another term, then the Governor may nominate such candidates in which

case the Governor shall submit to the legislature for advice and consent the renomination of the declaring candidate as judge.

If the Governor determines not to so-nominate such declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of Section 3.9 and 3.10.

If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the Governor shall not submit to the legislature for advice and consent the renomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of state court.

Section 3.16 Judicial Disabilities and Tenure. There is established a State Commission on Judicial Disabilities and Tenure, hereinafter referred to as the Tenure Commission.

The Tenure Commission shall consist of five members selected in accordance with the business of Subsection B. Such members shall serve for terms of six years except that the members first selected pursuant to this Constitution shall begin to serve their terms from the expiration of the terms of incumbent members of the State Commission on Judicial Disabilities

and Tenure as established by Section 431 of the District of Columbia Self-Government and Governmental Reorganization.

Two. The Tenure Commission shall act only at meetings called by the Chairman or the majority of the Tenure Commission held after notice has been given of such meeting to all Tenure Commission members.

Three. The Tenure Commission shall choose annually from among its members a chairman and such other officers as it may deem necessary. The Tenure Commission may adopt such rules of procedure not inconsistent with the Constitution as may be necessary to govern the business of the Tenure Commission.

Four. The State Government shall furnish to the Tenure Commission upon the request of the Tenure Commission such records, information, services and such other assistance and facilities as may be necessary to enable the Tenure Commission to properly perform its functions.

Information so furnished shall be treated by the Tenure Commission as privileged and confidential.

B) One. No person may be appointed to the Tenure Commission unless he A) is a citizen of the United States, B) is a bona fide resident of the state and has maintained an actual place of abode in the state for at least one year

immediately prior to his appointment and C) is not an officer or employee of the legislative branch of executives or military department or agency of the United States and is not an officer or an employee of the state government including its judicial branch.

Two. Any vacancy on the Tenure Commission shall be filled in the same manner in which the original appointment was made.

Any person so-appointed to fill a vacancy occurring other than the expiration of a prior term shall serve only for the remainder of the unexpired term of his predecessor.

Three. In addition to all other qualifications listed in this section, lawyer-members of the Tenure Comission shall have the qualifications prescribed for persons appointed as judges of the state courts.

Members of the Tenure Commission shall be appointed as follows:

A) Two members shall be appointed by the Board of Governors of the Unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District of Columbia or the state for at least five successive years preceding their appointment.

B) Two members shall be appointed by the Governor,

one of whom shall not be a lawyer.

C) One member shall be appointed by the legislature and shall not be a lawyer.

Section 3.17. Removal, Suspension and Involuntary Retirement of judges.

A) One. A judge of a state court shall be removed from office upon the filing in the State Court of Appeals by the Tenure Commission of an order of removal, certifying the entry in any court within the United States of a final judgment of a conviction of a crime which is punishable as a felony under federal law or which would be a felony in the state.

Two. A judge of a state court shall also be removed from office upon affirmance of an appeal from an order of removal filed in a State Court of Appeals by the Tenure Commission (or upon expiration of the term within which such an appeal may be taken) after a determination by the Tenure Commission of:

A) Wilful misconduct in office.

B) Wilful and persistent failure to perform judicial duties or,

C) Any other conduct which is prejudicial to the administration of justice or which brings the judicial office

into disrepute.

B) A judge of State Court shall be involuntarily retired from office when,

One, the Tenure Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent of his judicial duties and

Two, the Tenure Commission files in the State Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

C) One, a judge of a State Court shall be suspended with without salary,

A) upon

One, proof of a conviction of a crime referred to in Subsection A) One which has not become final or

Two, filing of an order of removal under Subsection A) Two which has not become final and

B) upon the filing by the Tenure Commission of an order of suspension in the State Court of Appeals.

Suspension under this paragragraph shall continue until the termination of all appeals.

If the conviction is reversed or the order of

removal is set aside, the judge shall be reinstated and shall recover his salary and all rights and privileges of his office.

Two, a judge of a state court shall be suspended from all judicial duties with such retirement salary as he may be entitled to upon the filing by the Tenure Commission of an order of involuntary retirement under Subsection B in the State Court of Appeals.

Suspension shall continue until termination of all appeals.

If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover his judicial salary less any retirement salary seized and shall be entitled to all the rights and privileges of office.

Three, a judge of a state court shall be suspended from all apart from his official duties with salary if the Tenure Commission, upon concurrence of five members

A) orders a hearing for removal or retirement of the judge pursuant to this subchapter and determines that his suspension is in the interest of the administration of justice and

B) files an order of suspension in the State Court of Appeals.

The suspension shall terminate as specified in the

order (which may be modified as appropriate by the Tenure Commission) but in no event later than a termination of all appeals.

Section 3.18 Administration. The Chief Justice of the Supreme Court shall be the administrative head of all courts of the state. He may assign justices and judges for temporary services in any court.

The Chief Justice, with the approval of the Supreme Court, shall appoint an administrative director to serve at the pleasure of the Supreme Court and to supervise the administrative operations of the judicial system of the state.

Section 3.19 Finance. The Chief Justice of the Supreme Court shall submit to the executives an annual budget for the unified judicial system of the executives or transmit the proposed judicial system budget without change to the legislature.

He may make recommendations with respect thereto.

The executive shall not be required to propose revenues to fund the entire submission but must propose from those for that portion of the budget he recommends for acceptance by the legislature.

Section 3.20. Rule-making. The Supreme Court

shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedures in civil and criminal cases in all courts.

These rules may be changed by the legislature by a two-thirds vote of all members.

Section 3.21. And the last one. State Judicial Advisory Commission. Within three years of the effective date of this Constitution there shall be established a State Judicial Advisory Commission to serve a term of two years.

The Commission shall be comprised of:

A) Two persons appointed by the Governor

B) Two persons appointed by the Legislature

C) Two persons appointed by the D.C. Bar

D) One person appointed by the Chief Justice

The Commission shall study the feasibility and desirability of the establishment of inferior courts in the state to include the question of a housing court, neighborhood courts or other inferior courts and the use of arbitration without resort to the court.

At the conclusion of their term of office, the Commission shall present a report to the Legislature and the people with this finding and recommendations.

Now I will have questions.

PRESIDENT CASSELL: Yes, well, the procedure that we established last night is that we engage in what ever explanation and analysis that you want and then take questions.

DELEGATE BLOUNT: Now, everyone should have a copy tonight of a more up-to-date version of the committee report which accompanies --

DELEGATE CORN: Excuse me, we didn't get the report.

DELEGATE BLOUNT: Well, at first I think they passed them out every other person and then --

[Side conversations.]

DELEGATE BLOUNT: Barbara Baker, do we have the extra articles?

[Reply inaudible.]

DELEGATE BLOUNT: All right, now we are open for the 30-minute questioning period.

PRESIDENT CASSELL: Well, first I thought you might want to, you know, give the highlights, any explanation, any analysis that you want to give verbally, the members of your Committee want to give or that you may want to read from this -- just so you may clarify some of the things that may come up on the Floor.

You do have your report and you may want to do that or members of your committee may want to discuss it.

DELGATE BLOUNT: Okay, well, I had begun to give the highlights previously and --

PRESIDENT CASSELL: All right, I am sorry.

DELEGATE BLOUNT: -- so I'll continue with that.

PRESIDENT CASSELL: Yes, surely.

DELEGATE BLOUNT: Unified judicial system consisting of Superior Court and a Supreme Court. These are highlights of the article.

Superior Court would have a chief judge and not less than 45 nor more than 48 associate judges.

Supreme Court would have a Chief Justice and eight associate justices sitting en banc.

Judicial Nominating Commission will designate Chief Justice and Chief Judge.

The Governor shall appoint justices and judges from a list of three from Judicial Nominating Commission with the advice and consent of legislature.

Justices of the Supreme Court shall serve for 12 years while judges of Superior Court shall serve 10 years.

Tenure Commission will review Justices and Judges performance for reappointment and removal of Justices and

judges for cause.

The Judicial Advisory Commission will study the desirability or feasibility for the establishment of inferior courts and the question of a housing court, neighborhood court or other inferior courts.

The report has rationale and analysis --

DELEGATE CORN: Excuse me, Delegate Blount, when are we going to get that report?

DELEGATE BLOUNT: The point is, you had a report that was attached to it but it was not as detailed as this one is. You had a report but it just was not as detailed as this. This is a more detailed committee report, so we are trying to provide you with more information.

Okay, it has been suggested that perhaps we just take five minutes to peruse this.

PRESIDENT CASSELL: Delegate Blount has suggested that you take five minutes to read the highlights that he has passed out and rather than have him read through the whole thing you might respond to that. That would begin our discussion period.

Is that all right, Delegate Blount?

DELEGATE BLOUNT: Fine.

PRESIDENT CASSELL: All right.

DELEGATE CORN: What about minority reports?

DELEGATE BLOUNT: There are two minority reports but the reports are not total substitutions of the whole article. They are just different sections that some of the committee members have minority reports [on] so I think Delegate Courts Oulahan and Delegate Brian Moore have minority reports, for different sections.

[Whereupon, a very brief recess is taken for purpose of perusal of documents.]

PRESIDENT CASSELL: We will now take questions. This is not the period for formal debate or challenge. This is simply to ask questions of the committee regarding the analysis which is shown here which you have been reading.

Delegate Jones.

DELEGATE JONES: On page 16 of .2 starting at line 12 if a judge suffers from a mental or physical disability -- now, can lay people attempt to judge the mental or physical disability of another person?

DELEGATE BLOUNT: Well, lay people alone, I would say, without training, could not. But as we can see what is happening even today in the different court cases, people are evaluated by professionals to judge their temperaments and mental conditions.

Also, I probably would add that, depending on the criteria that has been set up, the judges will be evaluated as to how they deviate from that.

PRESIDENT CASSELL: Delegate Jackson, Corn, Talmadge Moore.

DELEGATE JACKSON: Yes, I have a question -- a couple of questions about this. I am a little bit concerned because I see the functions of the Commission and everything that are stated and then the actual reasons of existence of the Commission seem to come in the back and it seems to me that -- I am trained in social concepts -- it seems to me that it is a very backwards way of putting it and I would make it come from a different way.

Now, for instance, on page 16 where it is the first time I see any reference to what actions to remove a judge but it states all over the document that the Tenure Committee is made up of this and made up of that but then when we come to the actual functions of a justice or a judge there is no statement of fact.

This is something that is supposed to be for the general public in Washington, then this can be very confusing and I just would like the rationale as to why it is done that way.

Now, please, I hope that I am not told that that is the way it is done in the Home Rule Charter or something. I don't want to be put off that way. What I want is, you know, an answer that will explain to me why this is not done in a simple way and not done in -- well, in social science logic -- the main point is stated and then the functions are laid out after that instead of this way, which seems off-purpose.

DELEGATE BLOUNT: It would be easier for us to answer if you would come up with a single question.

DELEGATE JACKSON: I can understand that but one question just wouldn't include all these things.

DELEGATE OULAHAN: Perhaps I can explain. The Tenure Commission is a form of judicial government which has been developed over the last ten years in connection with the Judicial Nomination Commissions.

The Tenure Commission replaces the process of impeachment in the legislature because it is a system which can take care of the judge who can't be impeached but at the same time is not carrying out his judicial responsibilities.

It has been in effect in the District of Columbia for over 11 years starting with the Home Rule Act in 1971.

It has worked very, very well. It works very well in the other states. It is designed to protect the system by

a more comprehensive policing than one would have with impeachment.

QUESTION: [Inaudible.]

DELEGATE OULAHAN: Where it is located in the District of Columbia. It does not have any --

DELEGATE JACKSON: No, no. I am not asking about the roots of all this -- it is not the roots that I am so worried about. It is the stating of the functions in clear language here so that the average individual can read it, without having Mr. Oulahan or some lawyer come and explain it to them.

It is not stated clearly and it is stated in a backward manner and my question was as to the logic for that. It was not that I didn't think it should exist.

DELEGATE BLOUNT: You are saying that the definition of the Tenure Commission --

DELEGATE JACKSON: It is not stated very clearly in one place. And it is stated only after a million functions, all right? and I think it should be stated clearly the purpose, first of all.

DELEGATE OULAHAN: Delegate Jackson, the establishment and membership of the Tenure Commission is shown in Section 3.16, where the procedures are explained.

The actions of the Tenure Commission are covered later on and are separately stated.

DELEGATE JACKSON: That does not answer my question.

SPEAKER: That is still unresponsive.

DELEGATE BLOUNT: Okay. I understand what you are saying and perhaps your point may be very well-taken.

You are saying that the definition should come in front instead of at the end.

DELEGATE JACKSON: Yes and the same thing exists with the Judicial Nomination Committee. This is not clearly expressed at all and it does not explain that somewhere else in here there is some more information.

I think it should be put there where the average citizen would be able to look at it and see it without being confused about where it is, because it is not a clear statement here.

PRESIDENT CASSELL: Okay, that question, I think, is understood now. This can come up again in the debate.

Delegate Corn.

DELEGATE CORN: I have a bunch of very short -- a series of very short questions that have me a little confused because of my lack of -- partly of knowledge of the wording

and other reasons.

What does "courts of record" mean, please? You used that on the first page. "The courts shall be courts of record." What does that mean?

And what does "en banc --"

DELEGATE BLOUNT: I am told that they are major, established courts.

DELEGATE CORN: Another thing, even though I am a French major, what does "en banc" mean in English?

DELEGATE BLOUNT: En banc, the judges sitting together all in one group instead of in a division.

VOICE: Would you please say what line you are referring to here?

DELEGATE CORN: Oh, he uses en banc throughout it several times.

In other words, it means a panel. Is that what it means?

DELEGATE KAVENY: It means the whole court. It --

DELEGATE CORN: Shut up. I am asking them.

DELEGATE BLOUNT: Let's say you have nine justices. It means all nine justices will hear each case instead of divisions into three or four or something like that.

DELEGATE CORN: Okay, the next question I have is

on page 2, line 4, you have 45 to 48 associate judges. How many are there currently sitting?

DELEGATE BLOUNT: There are 44 and a Chief Judge.

DELEGATE CORN: So there are currently 44 allowed.

DELEGATE BLOUNT: Forty-four and a Chief Judge.

DELEGATE CORN: So a total of 45. And you are allowing up to 48.

And then on line 6 of that same page, you are allowing eight associate judges under the Supreme Court. How many are currently allowed?

DELEGATE BLOUNT: In the Superior Court there are eight already allowed.

DELEGATE CORN: So you are sticking to the same number. Okay, let me just ask you one or two more things very quickly.

On page 5, lines 14 -- I have trouble reading this and I don't know whether it is because I don't understand enough about the judicial process or whether it was a mistake in the typing.

Do you mean a comma after the word "70" and a comma after the word "suspension"?

DELEGATE BLOUNT: What line?

DELEGATE CORN: Line 14. Because otherwise I don't

understand what you are talking about.

DELEGATE BLOUNT: "Retirement at age 70 --"

DELEGATE CORN: Comma "Or removal, comma, suspension, comma, or --" is that what you mean?

DELEGATE BLOUNT: [Conferring with committee.] Yes.

DELEGATE CORN: So there are supposed to be commas. Okay, comma after "70" and comma after "suspension."

SPEAKER: What page are you on?

DELEGATE CORN: Five, page five.

DELEGATE BLOUNT: I might point out that there are a number of what we call technical changes that will be made.

DELEGATE CORN: All right, the reason I am asking these things is I don't want to change your meaning when I don't have enough background knowledge about the judicial system.

Why, on page 10 --

SPEAKER: You don't have to do your style and drafting here.

DELEGATE CORN: I'm not doing my style and drafting here. I just want to ask some very quick questions.

I want to know on page 10 why you put an asterisk after "legislature" and after"Governor."

SEVERAL VOICES: Oh, come on. This is ridiculous.

PRESIDENT CASSELL: Delegate Corn, I think you are really dealing with grammar. It is the sense, if you have a question of a meaning. If punctuation makes the meaning unclear, certainly, but I don't think we want to do any grammatical or phraseological changes at this time.

DELEGATE CORN: Let me ask two more things. On page 13, number B) One C). Would you explain that to me, please?

DELEGATE BLOUNT: What is the question, now?

DELEGATE CORN: Page 13, small B) number One, Capital C. Would you explain what your idea is there?

DELEGATE BLOUNT: "Not an officer or an employer of the legislative branch of an executive or military department or agency of the United States and is not an officer or an employee of the Stage Government."

"Is not an employee of the State Government" which would be, as we have now, the District Government. And I am sure you understand the military.

DELEGATE CORN: Yes. Okay, I see. And number 2 on that same page, when you say, "It shall be filled in the same manner in which the appointment was made," do you mean through the selection process of -- if it was elected by the

Governor or you were appointed by the Governor, then you would be appointed by the Governor. If you were elected by the people, then you would be elected by the people? Is that what you mean?

DELEGATE BLOUNT: For the benefit of everyone, the question was, at the bottom of page 13, "Any vacancy on the Tenure Commission shall be filled in the same manner in which the original appointment was made."

So if the Governor was the one who appointed the person, then the Governor would --

DELEGATE CORN: And if they were elected by the people, then they would be elected by the people.

DELEGATE BLOUNT: That is correct.

DELEGATE CORN: Okay, on page 14, Board of Governors. What is the Board of Governors? I have not seen a definition of that in this article.

DELEGATE BLOUNT: The Unified District of Columbia Board of Governors.

DELEGATE CORN: The Board of Governors --

SPEAKER: Give the rest of us a chance, Gloria.

DELEGATE KAVENY: Read the whole thing.

DELEGATE CORN: Oh, I see. All right. I see. Okay. Okay, on page 16 --

SEVERAL VOICES: Give somebody else a chance. Let somebody else say something.

DELEGATE CORN: I am almost done. Just give me a second more. Page 16, number C, "Any other conduct which is prejudicial to the administration of justice." Isn't that rather subjective?

DELEGATE BLOUNT: What is your question, now?

DELEGATE CORN: Page number 16, lines 7 through 9. Isn't that rather subjective?

PRESIDENT CASSELL: Again I will have to interrupt. What you are doing is questioning not the meaning but you are characterizing it. If it is clear what it says, then there really is not any question.

If you do not understand what the meaning is, then you should ask questions. There will be an opportunity, a lot of opportunity, you know, when we get to the formal debate, to challenge the meaning or to challenge the interpretation.

Next is Delegate Talmadge Moore, Kameny, Mason, Schrag.

DELEGATE TALMADGE MOORE: Talmadge Moore, Mr. President, from Ward 5. In reading the document in general I see, Mr. Chairman Blount, I see you make several references to the D.C. Government and I was just wondering, what is the rationale behind this and also, particularly, I recall

reading one section where you referred to a salary of a GS-18 on the General Salary Scale. I don't even know whether we are going to have all of these kinds of things in the new state -- and the D.C. Bar and things of this nature.

It appears that if you just more or less took all your information from the present set-up that we have and I think you look at this, by utilizing D.C. in certain instances throughout the entire document.

DELEGATE BLOUNT: The references are of a transitional nature. In other words, in some of these sections you have to make a change from what is to the new so that is why you will see references sometimes to what is currently in place.

DELEGATE TALMADGE MOORE: Could you put a transitional statement or article in here which would cover that? I would just hate to see you continue to refer to something that perhaps we will be getting away from, you know, unless you have it in a transitional phase.

DELEGATE HARRIS: I would like to add some information related to that. In the Judiciary Article, where it states -- as Delegate Talmadge Moore mentioned -- where it says the "D.C. Court of Appeals," it was a mistake typist's part by not transferring that over to being "Supreme Court"

and the same thing about"District of Columbia Unified Bar." That should be the "Unified State Bar," which you will see there but it wasn't carried over in the typing.

And maybe -- would it be beneficial to make those corrections on your papers now? So that you will know when you get to that, that that is what that refers to?

And in 3.8 where it says "Retired Judge of the District of Columbia Court of Appeals," that should read, "Retired Judge of the Supreme Court -- the State Supreme Court."

DELEGATE TALMADGE MOORE: And what about what is written here about the GSAT General Schedule? We don't know whether we will have a GSAT.

DELEGATE HARRIS: That was a mistake. I think that was carried over from what is presently being paid: not to pay lower than what is being paid but not to go any farther, either. And that is why that is there.

DELEGATE BALDWIN: Mr. President, I think 3.8 is stated correctly. You are talking about the present situation. You have to. Retired judges of the present District of Columbia Court of Appeals. And you can't shift that to the Supreme Court because it is not in existence. They will then become part of the Supreme Court. But the language in 3.8 as stated

is the correct language.

DELEGATE HARRIS: In this document, the Court of Appeals refers to the Supreme Court and that determines use of language.

DELEGATE BALDWIN: There must be and should be what is called a "transition article."

DELEGATE TALMADGE MOORE: That is what I was talking about.

DELEGATE BALDWIN: And I am not sure that any committee has dealt with that and that 'transitional article will refer to these kinds of things.

But you have to call it the "D.C. Court of Appeals" now and later transfer that function to what will then become the Supreme Court. You can't talk about 3.8 Retired Senior Judges of the Supreme Court. It does not make any sense. You are talking about the Retired Judges of the Court of Appeals which is in existence now and those people will then become part of our Supreme Court.

DELEGATE TALMADGE MOORE: Mr. Blount, let me remind you that I still have the Floor.

PRESIDENT CASSELL: All right. The Committee is making its report and responding to questions.

DELEGATE TALMADGE MOORE: I still have the floor

but what I was trying to say, Mr. Blount, is that perhaps we could have a statement somewhere on that transitional paragraph which would cover this and we would not have to continue to refer to D.C. or to Home Rule Charter, et cetera. This is all that I was saying.

SEVERAL SPEAKERS: That is right.

PRESIDENT CASSELL: All right, Delegate Kameny.

DELEGATE KAMENY: Yes, I am concerned that in Article 3.3 as I read it -- Section 3.3, page 1 -- that the entire jurisdiction of the Supreme Court seems to be defined by statute so that the legislature, if it got nasty, could leave the Supreme Court functionless.

Why have you not provided some sorts of appeals -- for example, on constitutional issues or the like -- as a matter of right and not by statute. That concerns me very, very much and I wondered why you did it this way?

Every item of the jurisdiction, as I read it, of the Supreme Court, is subject to statute which means it could be wiped out by statute. We are seeing threats of this going on in Congress now with the U.S. Supreme Court.

And there are some things that the U.S. Supreme Court has unquestioned jurisdiction over. There are none here -- as I read it.

DELEGATE CORN: Ssshhhh. Can't you ask something without screaming?

DELEGATE KAMENY: Don't you tell me that. At some point you are going to get some criticism that you will never forget for the rest of your life. If I am interrupted one more time by you in this Convention --

[Laughter and applause.]

-- you will never, never, never forget what is going to happen. Shut up.

Let us now proceed, please.

DELEGATE HARRIS: Chairman Blount, that very question was raised by Delegate Schrag, who discussed it with Chairman Blount and I and maybe he would like to come up and give a view on that. And that was the thought that that phrase should be eliminated.

PRESIDENT CASSELL: Let's hope now that we have gotten that out of our system and that there need not be any more outbursts on anybody's part tonight --

DELEGATE KAVENY: Tell Delegate Corn that, not me.

PRESIDENT CASSELL: -- on anybody's part tonight.

DELEGATE SCHRAG: As Delegate Harris just stated, I discussed this precise question, Delegate Kameny, with the Chair of the Committee and other members of the Committee

today and they agreed that this was an inadvertent oversight and should be amended tonight to delete the phrase, "Authorizing the legislature to limit the appellate jurisdiction."

DELEGATE KAMENY: Will there then be some specifications in any way as to the kinds of matters the Supreme Court can review by right? I think you have to go the other mile, so to speak.

DELEGATE SCHRAG: The amendment which I discussed with the committee today was simply to delete the six words "to the extent provided by statute" and I think that would take care of the matter.

DELEGATE KAMENY: Let me read it without those words. [Pause to read.] Okay, thank you very much. I appreciate that.

PRESIDENT CASSELL: Delegate Charles Mason.

DELEGATE CHARLES MASON: I should like to commend the work of the committee and I hope that the questions I am about to ask will serve to clarify the intent.

In Section 3.1, the very first section, there is a term, "Such inferior courts as may from time to time be established by law."

My question is, does this terminology authorize the legislature, if it should find it necessary to establish

an intermediate appellate court between the Superior Court and the Supreme Court, if it does not -- it would appear that to establish such a court, if it were found necessary, would require a constitutional amendment.

It is not entirely clear to me what that language was put there for if it did not include that.

My next question relates to, in 3.5 on page 2, I am glad to see the Supreme Court is to sit en banc as does the highest court of every state that I know anything about. I am not aware of any state where the highest court in the state customarily sits by division, as does our present highest court in the District of Columbia.

The present court here sits almost always in a division of three judges. Occasionally there is a rehearing en banc when all nine sit but that is unusual. I do not recall any cases where all nine sat from the beginning although possibly they have.

I recently read a report a year or so or two ago which advocated an intermediate court of appeals here in the District and one of the arguments for it was that our Court of Appeals, the highest court in the jurisdiction, was so overloaded that it could not sit en banc and the reason it was sitting by division was because of that workload, that if

there were an intermediate court of appeals which would sit by division, only the most important cases moving to the highest court -- which would then sit en banc -- that we would then fall into the pattern of other states, which have the highest court sitting en banc.

I believe that report suggested the number of judges on the highest court be reduced from nine to seven, but always sit en banc and that the intermediate court be some number of judges, nine or more.

But my question here is, were these matters considered? Did the committee decide that the highest court would not be overworked when it will have to hold -- hear every case en banc -- as I think it should hear every case en banc?

My third question is, what was the rationale of the committee in reducing the term from the present number -- which I think it down to 10 from 12? I have no strong feelings one way or the other but I am interested in knowing what the reasoning of the committee was there.

And the remaining thing is, at the bottom of page 16 -- the bottom line of page 16 -- I think some words have been left out or something. It is probably just a typographical error.

DELEGATE THOMAS: You are correct, Delegate Mason.

The word that was left out is corrected on this copy.

DELEGATE CHARLES MASON: Okay, thank you very much.

PRESIDENT CASSELL: All right, would you please repeat those questions one at a time and Delegate Blount --

DELEGATE BLOUNT: Okay, I will refer the second question to Delegate Oulahan. But the first question was about the inferior courts and it was not intended that this article would allow courts to be established above the lower Superior Court level.

Do you want to add to that?

DELEGATE HARRIS: Yes. During the hearing, Delegate Mason, several persons indicated the need for a neighborhood or people's court. In the committee, Delegate Eichhorn and Delegate Bryan Moore were very much interested in housing courts along with peoples' courts so the thought in this particular article was that if you establish such inferior courts -- and we also proposed an advisory commission -- then therefore that would give the court leeway to establish housing courts, peoples or neighborhood courts and whatever other courts the legislature might find necessary in order to relieve the work of the major courts.

DELEGATE CHARLES MASON: Thank you.

DELEGATE BLOUNT: We have one more question from

Delegate Mason.

DELEGATE OULAHAN: I am always pleased to answer a question from a fellow member of the Bar.

There was no intermediate appeal court proposed but in the draft materials which I submitted to the committee it was laid out as an alternative following the Massachusetts Plan.

It was discussed in committee. The Committee felt that under the circumstances, there was no demonstrated economic or judicial management needs for the intermediate court of appeals.

Now, the provision for sitting en banc. The judges of the Court of Appeals of the District of Columbia in their latest report stated that if they became the Supreme Court, they felt that they should sit en banc as is the precedent in other Supreme Courts.

The nine members of that court can be increased by another four. There are four to five senior judges now sitting on the Court of Appeals so that they become Supreme Court Judges. Because of the death of the chief judge and the retirement of one of the senior judges, one of them is sitting now. They will have to sit, under the Constitution.

And that will mean that you will have, in effect,

two panels which can sit in some cases.

DELEGATE CORN: I wonder if I might clarify that last question.

VOICE: You haven't been called on yet. You haven't been recognized, Ma'am.

DELEGATE HARRIS: May I reply to the third part of your question? Okay, the third part of your question is why was there a reduction in the 15-years' term?

In looking over various state constitutions, the average year of service for a Supreme Court Justice was 10 years and the average term for a Superior Court Justice was anywhere from six to eight.

We thought, looking at all of the states, D.C. was one of the states with the highest terms for both courts and only three had 70 years to life so we thought we would reduce it a little to bring it in line -- and it is still higher than most states -- in what is currently the term of service with other states.

PRESIDENT CASSELL: Does that answer your question?

DELEGATE CHARLES MASON: Yes, Mr. Chairman, all except one.

PRESIDENT CASSELL: All right.

DELEGATE CHARLES MASON: The term "en banc" to me

means all of the judges, not two panels -- whatever the number is, whether it is 7, 9, 14 or any other number, it is every judge who is a member of the Court.

In the United States Courts of Appeal, all of the active judges sit en banc plus any senior judge who was on the original panel, when they sit en banc.

I am a little concerned at this statement just made that indicates that when you say en banc you do not mean en banc.

DELEGATE OULAHAN: We mean all the judges but we mean that one of the retired senior judges can take the place of an active judge and thereby, that active judge is available to write opinions; so in effect, you have got four or five additional judges who have the training who can slip in and take the place of the nine sitting en banc.

On the 15-year provision, I have a minority proposal to go to 15 years. The majority of the committee voted --

DELEGATE HARRIS: That is out of order. That is not what he asked.

DELEGATE OULAHAN: I am giving a definitive answer to answer the question --

DELEGATE HARRIS: You are out of order.

PRESIDENT CASSELL: Let the Chair do that.

DELEGATE OULAHAN: The committee considered and rejected my proposal that we retain the 15 years which has been in effect the 12 years in the District of Columbia. The result under the committee proposal -- with all due deference to my friends and companions -- is that you will have three types of judges; superior court judges who sit for 10 years and 15 years and superior court judges who will sit for 12 and 15. I think this will bring a great deal of problems for the new court system but I was overruled by my friends.

PRESIDENT CASSELL: Thank you.

Thank you. Now, let me indicate the people who have yet to speak: Schrag, Jordan, Bruning, Cooper, Baldwin -- all of whom have not spoken yet.

We are out of time. Without objection, I am going to extend the time so that all of those persons who have not once spoken/will have had an opportunity to do so.

Is that all right?

[General agreement is expressed.]

PRESIDENT CASSELL: All right, Delegate Schrag.

DELEGATE SCHRAG: Delegate Blount, at the bottom of page 4, the requirements for becoming a member of the court are laid out and these include being a lawyer for five years.

This is defined to mean practicing law for five

years or being on a law school faculty for five years or being employed as a lawyer for the U.S. or stage government for five years.

On page 7, another five-year term is listed for members of the Judicial Nominating Commission -- lawyer members of that commission -- and there is a similar five-year term for lawyer-members of the Tenure Commission.

Do I understand that these are really intended to be all in conformity with each other? That in each case it means practicing for five years or a law school professor within the state for five years or a federal or state lawyer for five years?

DELEGATE BLOUNT: You are correct in understanding that they are supposed to be consistent with each other.

DELEGATE SCHRAG: Is my understanding correct that the Style and Drafting Committee should conform these three provisions?

DELEGATE BLOUNT: [After conferring with committee.] Yes.

DELEGATE SCHRAG: Thank you.

PRESIDENT CASSELL: The next person is Delegate Jordan --

DELEGATE NAHIKIAN: That is not my understanding,

as the five years are all congruent but there are different qualifications for each of those.

In other words, the last two have to have been practicing for that term.

VOICE: What is the difference, then?

PRESIDENT CASSELL: I think you have got a very legitimate question but I am afraid there are people before you. I do have you down now.

DELEGATE NAHIKIAN: But this is in response to Schrag's question. My point is that I think it was answered incorrectly.

DELEGATE BLOUNT: Well, I would like to find out where you differ and why you differ.

PRESIDENT CASSELL: Delegate Schrag, do you want to reply to that?

DELEGATE SCHRAG: I am simply trying to find out the meaning of what the committee intended. It the committee intended that these three provisions should all provide for the same qualifications, then I am satisfied and I will not propose an amendment on this subject.

If the committee intended that these three provisions be different, then I will propose amendments on this subject. And I am satisfied with the Chair's answer that these

three provisions were all intended by the committee to be the same five-year requirements.

If that is not the understanding of the body, then I will propose an amendment on the subject.

I am trying to avoid taking up the body's time by clarifying the committee's intention now.

Delegate Nahikian is basically asking the same question. Will Delegate Nahikian accept the Chair's statement on this?

DELEGATE NAHIKIAN: That is not the way I intended the question.

DELEGATE HARRIS: Mr. Chair, may I give some discussion to that?

PRESIDENT CASSELL: Yes.

DELEGATE HARRIS: In our last two drafting sessions, in most of the articles you see here where we indicated that a person should have been engaged in the practice of law, phenomenal with that, we also indicated that, or on the faculty of a law school and that runs throughout the Judicial Nomination Committee, the Judicial Tenure as well as Qualification, so I think if we are to bring it in line, it could read the same throughout.

DELEGATE NAHIKIAN: Okay, then, there is confusion

because my understanding was that with the -- when it came to the Tenure Commission and later, to the later commissions, that the interest of the committee was to have people who had been in the practice of law for five years, not necessarily someone who has been a law professor for five years. And there is a difference, as Schrag pointed out.

PRESIDENT CASSELL: Well, is the answer that her understanding is not correct?

DELEGATE NAHIKIAN: If it said so here, I would be correct.

DELEGATE HARRIS: If you will look at page 22, line 11 D), of the five people who are to be elected to the Commission, D) says three shall have been elected by the voters and shall not be lawyers .

E) says shall have been engaged in the practice of law in the state for at least five years.

DELEGATE NAHIKIAN: But look at B).

DELEGATE HARRIS: But B) is appointed.

[Side conference.]

DELEGATE NAHIKIAN: Okay, B) is appointed but it says that that person shall have been engaged in the practice of law in the state for at least five years preceding the appointment.

Delegate Schrag asked, does it also mean that that person could have been teaching in a law school for five years or was employed as a lawyer for the United States Government for five years, or the state government and still be able to be appointed to the Tenure Commission when in fact, my understanding that they had to have been a practicing lawyer -- in the practice of law.

DELEGATE HARRIS: But throughout, it could be either/or.

DELEGATE EICHHORN: Someone is confusing lawyer qualifications with qualifications for judges. Nominations is different.

DELEGATE HARRIS: It could be either/or.

DELEGATE NAHIKIAN: My understanding of B) is that that had to be a practicing lawyer.

VOICE: Can we move on?

DELEGATE HARRIS: Not necessarily. Not in the discussion of the committee because we looked at the 4) Appointed and then the 5) -- looked at it collectively and the skills that they would bring to the Commission.

DELEGATE EICHHORN: There is a conflict there, obviously.

PRESIDENT CASSELL: Committee Member Eichhorn.

DELEGATE EICHHORN: Yes, my recollection is that we did not discuss this with regard to the Judicial Commission.

The Tenure Commission states that membership qualifications for lawyers shall be the same as for judges. There is an inconsistency on the Judicial Nomination Commission and I do not recall, when we established this requirement, that we considered whether or not professors of law should be eligible. I don't think we addressed it.

But there is an inconsistency here that could be addressed tonight.

PRESIDENT CASSELL: There is a feeling that a remedy is needed for that and that can take place during the formal debate.

The next questioner is Delegate Jordan.

DELEGATE JORDAN: Thank you, Mr. Chairman. I have one question I would like to raise. It deals with Section 3.3 and it says that -- it is at line 13 -- starts at line 13 or something like that -- that "Review orders and decisions of the Governor and any agency of the Executive Branch."

Now, currently, the Court of Appeals also reviews orders and decisions of independent boards and commissions and I don't see that function carried over at any place in the

present court system.

Now, my question is, is the intention of the committee that the Supreme Court will also continue to exercise the -- I mean, the D.C. Court of Appeals' practice of reviewing decisions of independent boards and commissions?

DELEGATE BLOUNT: Yes.

PRESIDENT CASSELL: Delegate Bruning.

DELEGATE BRUNING: Several questions. One, in articles like 3.6 are you, in effect, grandfathering in judges that are currently in those positions that would be changed by the new state administration.

DELEGATE BLOUNT: What is the question again?

DELEGATE BRUNING: Essentially, are we grandfathering in the method of having the judges that are now active becoming the judges in the branch that is now defined for duty --

DELEGATE BLOUNT: That is correct.

DELEGATE BRUNING: Okay. Secondly, in terms of the thinking behind -- was there ever thinking in terms of having the majority of non-lawyers make up the Judicial Nominating Committee?

DELEGATE BLOUNT: I don't believe that was discussed.

DELEGATE BRUNING: And then another question that pertains to that -- with the Tenure Commission, none of those people are elected by the voters. The Judicial Nomination Commission provided that nine are elected by the voters.

What is the rationale between in one instance, election by majority and in the second instance, electing no-one?

DELEGATE CLARKE: The Tenure Commission's responsibilities are considerably different than the Nomination Commission's responsibilities are considerably different than the Nomination Commission's responsibilities.

The Nomination Commission's responsibilities -- and I ought to indicate that I was not there but I do not agree with the election of the Nomination Commission but nevertheless it can still be justified as to being a difference.

The Nomination Commission responsibilities are to find people who are appropriate to be judges on the court.

The Tenure Commission's responsibility is to see if the judge carries out the job according to the standards of the canons of judicial ethics in consistency with the law of the state, whatever this might be, to have elected persons serving on the Tenure Commission whose responsibility theoretically would be to reflect the popular will would be to say

that the judges are not independent but they have to be responsive to questions of public will -- fluctuating as it might and not to the questions of law or to the standards of judicial conduct.

Accordingly, I think you might be able to say that we could elect persons to the Judicial Nomination Commission, though I am not of that view. But it certainly would not be proper to say that we should elect people to the Tenure Commission.

DELEGATE BRUNING: Part of the response meets my next question -- my last question -- was election of judges or the potentially reconfirmation of judges after appointment and then some type of election procedure for several years through election or a period of preceded by the committee as possible to the appointment process.

DELEGATE BLOUNT: Well, that issue was thoroughly discussed, the pros and cons, and it was decided on the side of appointment.

DELEGATE BRUNING: Could you say that again? I was unable to hear you.

DELEGATE BLOUNT: I am saying that that issue was thoroughly discussed and --

SPEAKER: And what was decided?

DELEGATE BLOUNT: Well, the basic points for appointment were that the judges should not be subjected to political campaigns.

DELEGATE CORN: Why not? Why not? They are in other states.

DELEGATE CLARKE: The theory behind the appointment rather than the election is essentially that the judge has to reflect some independent thinking and that the persons who go upon the court must sometimes be chosen for their willingness to adhere to the law that is written by elected persons and which is enforced by elected persons and that they have to reflect a certain amount of independence.

There is also -- I know that I brought up in one of the hearings my own experiences with the Southern Christian Leadership Conference and the Civil Rights Law development where oftentimes cases had to be taken a long ways through elected judges and state apparatuses just in order to meet a doctrine called "The exhaustion of state remedies" in hopes that we could finally get the case to a federal judge who was appointed and who possessed the requisite independence to address it.

Secondly, if you have the reconsideration -- in other words, the judge is on the Bench and he must or she must

undergo election for a continued term, you have the possibility of that judge being very responsive to moments of intense community feeling.

I cannot say that in the history of this community there has ever been a real moment of hysteria but in some communities there have been moments of hysteria and you have judges at that time facing election for their office and it can work very great havoc upon the rights of people who are not of the persuasion that is behind the intense feeling.

DELEGATE HARRIS: If I may speak to that, one of the reasons that we proposed having some members elected to the Judicial Nomination Committee Commission is to give the people a part to play in the selection of judges rather than have outright election.

One of the other points we discussed during the committee meetings was the fact that a lot of judges are not into campaigning. It is an expensive venture and that they would spend a large part of their time campaigning and they would be subject to the political whims of the head of the new state.

PRESIDENT CASSELL: All right, Delegate Cooper, Baldwin, Shelton, Rothschild, Love, Simmons. Let's get them all before we cut our time off. And I am taking only those

who have not spoken yet. Delegate Cooper.

DELEGATE COOPER: Yes, my question is very much along the same lines as a question that came earlier this evening and it is with regard to page 20, line 9, Section 3.9 called Financing and my question is, did your committee consider at any time that this might be the purview of another committee? And if so, I would like to know why it appeared in your committee proposal and what the committee's feelings were on the particular article that they did come up with in regard to financing? That is, when you drafted your report.

DELEGATE CLARKE: There are traditionally, in charters and state constitutions, specific provisions pertaining to judicial budgeting.

The reason behind that is a sensitivity to the fact that executive branches are often litigants before the court when a person who is aggrieved by court action, they may take the Executive Branch to court for an injunction when a person has been damaged by a police officer or by an accident in which an Executive Branch car was involved or something.

They may sue the Executive Branch and the Executive Branch is often therefore a litigant before the court.

Accordingly, it has been provided in many places

for special handling of court budgets.

The section which your committee came up with was designed to deal with that. It provides that the executive may transmit the proposed budget and once a part of the provision, which was a matter of some discussion in committee, the executive must transmit the budget to the legislature but he does not have to be responsible for suggesting funding for that part of the budget which he does not recommend.

That is designed to be cognizant and respectful of the executive responsibilities for fund-raising and for tax-raising and for tax proposals so as not to give him the politically-impossible task of having to recommend taxes to fund the budget that he does not himself stand behind the expenditure of.

But it does give to the legislature the final word on the judicial budget and that is the reason why specific provisions are provided with respect to it.

DELEGATE COOPER: That satisfies -- that answers the second part of my question but the first part was, did your committee ever consider that this might be undertaken in another committee?

DELEGATE CLARKE: I don't recall.

DELEGATE NAHIKIAN: Just one other response to

that, Mr. Cooper. There was a suggestion during committee discussion about the possibility of having the administration of the court created by a creating sort of a board of directors or a commission that would direct the court which would involve citizens in the process of overseeing the administration and the budget of the court which was never a serious proposal considered by the committee but it was a subject of discussion.

It was something that I brought up that I thought we could have looked at.

DELEGATE COATES: Point of expediency, Mr. Chairman.

DELEGATE BLOUNT: But really, I don't remember that we addressed that, Cooper. That is the part you were asking. I don't think we did.

PRESIDENT CASSELL: Thirty seconds for your point of expediency.

DELEGATE COATES: The expediency, sir, is that my question relates to the question most recently raised by Delegate Cooper. Could I extend that question?

PRESIDENT CASSELL: You may.

DELEGATE COATES: Thank you, sir. My question, Mr. Chairperson Blount, is in the event that there is a difference between the Governor and the Chief Judge regarding the

matter of budget on which the legislature makes a decision, does this provision, in the view of the committee, prohibit a veto by the governor?

DELEGATE BLOUNT: No, it does not.

DELEGATE LETT-SIMMONS: In the interest of expedience, I would like to respond that in the executive branch we have provided that the governor, as he does his appropriations bill, cannot change the budget of either the legislature or the judiciary.

DELEGATE COATES: [Inaudible.]

PRESIDENT CASSELL: Yes, there may be many such overlappings but I would not want to hold up this question period for that. I think we really have to deal with that once we get into the formal debate.

Delegate Baldwin.

DELEGATE BALDWIN: Delegate Blount, what percentage of the state court judges are elected as opposed to appointed?

DELEGATE BLOUNT: I don't recall that offhand but it is -- it should be -- [side conference.] Okay, I am told it is approximately half.

DELEGATE BALDWIN: Thank you. My second point is one of observation. I think 3.2 and 3.3 should be reversed.

As you probably know, courts are listed in descending order and so wherever you have the Supreme Court -- which is the highest court -- it should be first and the Superior Court second.

Therefore, 3.2 and 3.3 as well as 3.4 and 3.5 should be reversed. Style and Drafting probably will pick that up.

DELEGATE KAVENY: Thank you for the tip.

DELEGATE CORN: I am sure we will.

DELEGATE BLOUNT: I am sure we have no objections to that.

DELEGATE BALDWIN: My next point is that in 3.4, as far as the composition of Superior Court judges, it says there shall be no more than 48. Isn't it a fact that the present Superior Court exceeds 48 now?

SEVERAL VOICES: Forty-five.

DELEGATE BALDWIN: No, I am asking the committe and I want the exact information, factual information.

DELEGATE BLOUNT: Forty-five, including the Chief Judge.

DELEGATE BALDWIN: Thank you.

SEVERAL VOICES: Forty-four. Forty-four.

DELEGATE CORN: That question has been asked and

answered. I asked it before.

DELEGATE BALDWIN: And Mr. Blount, my final point is that under 3.5, what is the rationale and did you take a look at other courts in limiting the chief judge to four years?

Can you name any other courts in the country where the chief judge of these courts is limited to a term of four years? What is the rationale of limiting the chief judge of this particular court to four years?

DELEGATE BLOUNT: Would some of the other committee members like to respond to that?

DELEGATE CLARKE: There are other chief judges whose terms are limited to four years. Both the Superior and the D.C. Court of Appeals are limited now to four years and the theory behind that is, the chief judge's responsibility as distinct from the regular judge's responsibility pertains to administration and there should be some review of it.

There might not be able to be a review of a judge's judicial decision and that is for purposes of independence, it should be separated from review but as to the questions of the ability to administer and the ability to maintain some congeniality with his or her colleagues, the decision ought to be subject to review periodically.

Moreover, in the federal system, by custom, the

chief judgeship goes on the basis of seniority and often falls to a person who does not remain in a position for more than four years because of the limit of age 70.

DELEGATE BALDWIN: Delegate Clarke, just for my own information, in our present Superior Court we have Judge Carl Muelke -- isn't that the Chief Judge?

DELEGATE CLARKE: Yes, sir.

DELEGATE BALDWIN: Hasn't he been serving for longer than four years?

DELEGATE CLARKE: I believe that he has been. But he has been reappointed. It is a term. It is a fixed term that he serves for. However, he is eligible for reappointment.

DELEGATE BALDWIN: Okay, thank you.

PRESIDENT CASSELL: Okay, now, before we go on to the next speaker -- and that speaker is Delegate Shelton -- let me ask all of the members of the committee to please come up front so that you can easily respond to questions.

Delegate Clarke can be heard from any part of the room but Delegate Clarke, if you would please come up front and Delegate Oulahan, Delegate Thomas is here, Delegate Eichhorn, Delegate Paremore is here, Delegate Brian Moore and Delegate Nahikian.

These people were here once but they left. Could

we have those committee members up front, please? So that they could easily respond to any question that they would want to respond to.

DELEGATE PARAMORE: Yes, I just wanted to respond to Delegate Baldwin's question with some statistics related to judicial selection today.

Elections may happen to be partisan and non-partisan in different states so that is two aspects right there. Partisan elections are held to select most or all judges in 13 states and some judges in eight or other states and so on. In 17 states it is for some judges in three states. [Sic].

Now, as far as the Supreme Court, one-half of the state hold elections for Supreme Court Judges; 11 are partisan and 14 are non-partisan.

Nominating commissions help governors appoint Supreme Court Judges in four states. The governor acts on his own. Legislatures select or appoint Supreme Court Judges in four states.

Appellate courts, 17 states out of the 32 which have immediate appellate courts elect judges to these courts. Eight use partisan elections and nine use non-partisan elections And so on.

So we do have several in many states who do have

elections of judges on all levels, even up to the Supreme Court level and basically, I support the election of judges, especially on the lower level because I feel that there are certain persons in our society who are not represented and you find that persons who are in the lower income bracket cannot always afford to pay the best lawyer, cannot always afford to have specific lawyers who can wait and get the particular judge that they want because they exert financial influence.

So you find that on the lower level, the election of judges will support the aspect of your lower income bracket because we all know that no matter what level that they are on -- no matter what level you are on, your voice is your vote and it is one thing, if you make 2 cents a week, you can still vote and that is your voice and if you deal with that and can organize, then your vote can even be that much more powerful.

So I think that what happened was -- I just want to say this one more thing -- I think that what happened was, as far as the Commission, the committee was trying to reach a happy medium in that they were trying to represent the people in some form or fashion by at least letting them elect those persons who were going to be on the commission.

DELEGATE THOMAS: Excuse me, I would like to ask a question. I would like to know, as a member of the committee how can elections of judges help the financial strength of the people in the lower echelons of the society?

PRESIDENT CASSELL: Delegate Thomas, really, Delegate Paramore's remarks and your remarks are really out of order. We are supposed to be asking questions regarding what is meant by what is meant by what you are presenting, right? If we can stick to that, right?

Okay, Delegate Shelton.

DELEGATE SHELTON: I would like to know what were the problems with the existing system which this proposal seeks to address and to overcome?

DELEGATE THOMAS: I would like to state that we looked at the existing system and we are the only system in the United States that has the unified court system.

Most of the members on the committee agreed and that is why we went for what we have today.

DELEGATE BLOUNT: I might add that, other than a heavy case load, I don't think there were major problems brought to us by professional persons with the current system.

DELEGATE EICHHORN: Delegate Shelton, one of the things that I might add -- might point out -- is that one of

the experts that testified before our committee, Dr. Mary Barry, who is a professor of law, at Howard University, pointed out in her testimony to us that the District of Columbia's judicial appointment system in particular was designed to meet the requirements of a mixed federal-state authority over the affairs of the District because that is what we have been.

Moving to a state court system, one of the problems that she did point out was that provisions for citizen involvement in today's court system in the District of Columbia, as she puts it, are absolutely non-existent.

As the state constitution is drafted, a primary issue is this subject of how much citizen involvement is desirable. It obviously was a point of debate on the committee.

It was addressed to some extent through the Judicial Nomination Commission which parenthetically, I have a problem with because it is still predominantly lawyers but it didn't address that for me and that was the biggest problem with our current court system.

DELEGATE SHELTON: All right, question number two. You have here, Unified State Bar. What is meant by that?

PRESIDENT CASSELL: What line? What page?

DELEGATE SHELTON: That is 3.11, line 11.

DELEGATE OULAHAN: Delegate Shelton, a unified

Bar means that every lawyer in the District of Columbia who practices before the courts has to belong to the Bar. That means there is a unified system of discipline and it is to protect the public.

DELEGATE SHELTON: My question, therefore, would be that it has been traditionally known that some ethnic groups in this community have not been able to maticulate ? through the District Bar. Would this question of Uniform Bar enable people from other states to be able to practice and become judges here?

DELEGATE OULAHAN: In the District of Columbia, the requirements for admission to the Bar are generally the same as those in other states. I am not aware of the problem that you mentioned.

It is a Unified Bar in every sense of the word. Its Board of Governors is unified and represents a number of -- in fact, all of the interests that I am aware of in the District of Columbia. It is a very good system

DELEGATE SHELTON: Okay. My next question is -- my final question is, last night in the Preamble you talked about justice and equality. Did you attempt to determine how this system would be better and enable us to get justice and equality?

DELEGATE BLOUNT: Well, I think that is contained in the discussions but there are no direct references to that.

DELEGATE SHELTON: What is your thinking?

DELEGATE BLOUNT: My personal thinking?

DELEGATE SHELTON: Well, this section provides for justice and equality. Is that more than the present system does? Or would it be the same system of justice and equality that we have now?

DELEGATE BLOUNT: Yes, the very fact that the committee adopted this system means that the committee feels very strongly that this would be the best system for the District of Columbia.

DELEGATE HARRIS: Chairman Blount, may I echo somewhat and say to Delegate Shelton that the proposed 3.21, which is the State Judicial Advisory Commission, is here because the members of the committee thought that this Commission would look into specific problems arising in the community that would not be addressed in any other way and this housing courts, that is unlawful entry, that is -- it could be traffic problems, it could be some kinds of civil disturbances -- whatever can come through there, the commission would address that.

Peoples' courts, neighborhood courts and the new composition of the Judicial Nomination Commission give the

citizens some input into the work of the judicial system but actually, those are the only two completely revamped suggestions in light of our present court.

PRESIDENT CASSELL: Delegate Rothschild.

DELEGATE ROTHSCHILD: I have a few questions. One, the State Judicial Advisory Commission. Is that just advisory? I mean, they have no power with which to construct anything? Who decides these things, in other words?

Where is the Finance Committee, in other words? There is no provision in here saying that the Legislature shall finance or anybody shall finance so I am just wondering if that might sorta get lost -- that might just be a token type of thing that never gets to the authorities.

Shall I ask all the questions at once?

SPEAKER: Ask them one at a time.

DELEGATE BLOUNT: They have no authority to enact anything. They can only make recommendations to the legislature. Financing would come, I suppose, from the legislature in and the budget.

DELEGATE ROTHCHILD: It is not stated here.

PRESIDENT CASSELL: All right, there are many people who cannot hear the question. They can't hear that dialog. Why don't you come up and share the microphone with

the committee?

All right, while you are doing that, why don't we see if we can't get a little more participation? There are several people on the committee here and I am sure that you all had part in all these deliberations. Please, anybody else on the committee who has any responses, let us have them.

DELEGATE ROTHCHILD: Yes. I was just concerned that the State Judicial Advisory Commission -- there is no authority within the Constitution for its funding or so forth and it may be just a token commission that never really receives any true authority and it may have just sort have been a catchall at the end for things we did not have time to deal with and I just wanted to understand what the committee's feelings were as far as financing and authority.

DELEGATE BLOUNT: Okay. It may be that the legislature will have to provide funds for the commission.

It could be done in the form of an amendment when the time comes.

DELEGATE ROTHCHILD: Okay, on section 3.15 -- that is page 10 -- it says, "If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to any other term than then the Governor shall not submit to the legislature for advice and consent to the renomination of the

declaring candidate as judge or such judge shall not be eligible for reappointment or appointment as a judge of a state court."

Is that forever?

DELEGATE BLOUNT: Is what forever?

DELEGATE ROTHSCHILD: That the person will never, ever be eligible to be a judge again?

DELEGATE BLOUNT: I believe so.

Are there other comments from the committee?

DELEGATE EICHHORN: I think we should state that.

DELEGATE BLOUNT: Yes, very definitely. If he is determined to be unqualified, then I do not see that he would be readmitted at any other time.

DELEGATE ROTHSCHILD: Another question. The limiting of the judges to 48 -- the number 48. I am concerned that maybe limiting the number of judges, if we ever want to change it, requires a constitutional amendment.

Why was it felt important to limit it and not put up sort of a system where it could be carefully monitored but not necessarily an absolute number?

In other words, our Federal Constitution would really have given some problems if they had limited the number.

DELEGATE BLOUNT: Well, that was discussed very

thoroughly. There were some who requested it and one -- a lower number of judges -- and some who wanted more so this was basically a compromise.

It was felt that the number that was provided would be enough to handle the heavy case load that may become large in the future.

DELEGATE HARRIS: Delegate Blount, there was a proposal by one of the committee members that there should be no limitation on the number of judges.

Looking over the various states where they have 150, 230, 275 judges and that was not unusual, it was the thinking of the committee that we should put some ceiling on it and the proposals went from the present number of 44 to 55.

The reason the committee did not support 50 to 55 was they thought it was too expensive and they thought you did not really need that many judges to handle the educational load as it was discussed by many people who came before the hearing.

So actually, we must have voted about seven times on that one issue and that is how we got the number 45 to 48. And there is still some thought that maybe we do not need that many;if we, in fact, established the inferior court to take some of the court's load, would we in fact need that many?

But right now we do not know and we could not have foreseen -- we knew that we needed more, preferably. And until those courts are established, it is hard to say whether we need any more than that.

DELEGATE ROTHCHILD: The other part of my question is, if you were concerned about the expansion indefinitely of judges, could not there have been systematically-restructured some type of a way that it had to be approved by the legislatur a high number of votes?

In other words, a way to keep it down but not necessarily an absolute limit? Was there anything of that nature considered?

DELEGATE HARRIS: No. It was discussed but we also did discuss that presently the judges sit in panel and it was thought that when that was originally established, that sitting in panel did alleviate some of the large court's load, okay?

However, it was thought that if we did not put a ceiling on it, it might get out of hand and the correct wording was not forthcoming from the members. We thought that we should put a ceiling on it and if it is ever needed in the next 10 to 20 years, then maybe it can be discussed but we think that that minor number would handle the present load of the